



Nu-Trek, Inc.; 17150 Via del Campo, Suite 202; San Diego, CA 92127; Phone (858) 487-2172; Fax (858) 798-1119.

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "Agreement") is made and entered into _____ (the "Effective Date"), by and between Nu-Trek, Inc., a California corporation (Referred to herein as "Nu-Trek"), with its principal place of business located at 17150 Via del Campo, Suite 202, San Diego, CA 92127, and _____. ("Promisor"), with its principal place of business located at _____.

WHEREAS, Nu-Trek and Promisor wish to enter into discussions for the purpose of exploring and/or pursuing a business opportunity of mutual interest (the "Purpose") in connection with which each party may disclose to the other certain Proprietary Information (as defined below) which the disclosing party desires the receiving party to treat as confidential in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PROPRIETARY INFORMATION.** For purposes of this Agreement, "Proprietary Information" shall mean all information disclosed by one party (the "Disclosing Party") and its Representatives (as defined below) to the other party (the "Receiving Party") and its Representatives, either directly or indirectly, in writing, orally, or by inspection of tangible objects, and designated in writing as proprietary, confidential or a similar designation, or identified as confidential or proprietary at the time of disclosure if such disclosure is verbal or visual and is subsequently documented in written form to the Receiving Party within thirty (30) days from the date of such verbal or visual disclosure, including, but not limited to: (a) know-how, trade secrets, processes, designs, inventions, techniques, proposals, pricing and cost data, customer and vendor information, financial information, marketing and development plans, strategic plans, product and component designs, technical descriptions, hardware and software configurations, source code, object code, and any other information of a business, planning, financial, marketing or technical nature; (b) third party information that is disclosed to the Disclosing Party subject to a nondisclosure obligation; and (c) any documents, reports, memoranda, notes, files or analyses prepared by or on behalf of the Receiving Party that contain, summarize or are based upon any Proprietary Information. Proprietary Information shall not include information, which the Receiving Party can establish:

- (i) is publicly available prior to the Effective Date or becomes publicly available after the Effective Date through no breach of this Agreement or other act or omission by the Receiving Party or any individual or entity to whom the Receiving Party discloses such information;
- (ii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party;
- (iii) is obtained by the Receiving Party from a third party which, to the best of the Receiving Party's knowledge, was free to disclose such information without restriction;
- (iv) is independently developed by the Receiving Party without use of or reference to any Proprietary Information; or

- (v) is obligated to be produced under order of a court of competent jurisdiction or a valid administrative or congressional subpoena or information request, provided that the Receiving Party first notify the Disclosing Party of such event so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the terms of this Agreement.

2. CONFIDENTIALITY.

(A) The Receiving Party shall protect and hold the Proprietary Information in strict confidence, exercising the same degree of care it exercises to protect its own proprietary information, but not less than a reasonable degree of care. The Receiving Party shall immediately advise the Disclosing Party in writing of any unauthorized disclosure, misappropriation or misuse by any individual or entity of the Proprietary Information of which the Receiving Party is aware.

(B) Unless otherwise expressly set forth herein, the Receiving Party shall not, without the Disclosing Party's prior written consent, directly or indirectly: (i) use or copy the Proprietary Information for its own benefit or for the benefit of any other individual or entity, except in connection with the Purpose; (ii) disclose, transfer or otherwise make available the Proprietary Information to any other individual or entity, except affiliates, directors, officers, employees, consultants, advisors, and agents (collectively, "Representatives") of the Receiving Party who need to know such Proprietary Information for the Purpose; or (iii) reverse engineer, disassemble or decompile any prototypes, hardware devices, software or other tangible objects which embody the Proprietary Information.

(C) Notwithstanding anything to the contrary herein, prior to disclosing the Proprietary Information to any of its Representatives or other third parties who are authorized to have access to the Proprietary Information under this Agreement, the Receiving Party shall inform each of them of the confidential and proprietary nature thereof and of their obligations with respect to the maintenance of such Proprietary Information in conformance with the terms of this Agreement.

(D) Notwithstanding the expiration or termination of this Agreement, the Receiving Party's obligations under this Section 2 for each item of Proprietary Information shall continue for a period of five (5) years from the date that the Disclosing Party first discloses such item to the Receiving Party or the date of creation by or on behalf of the Receiving Party, as applicable.

3. RETURN OF PROPRIETARY INFORMATION. Upon the expiration or termination of this Agreement, or at the Disclosing Party's written request for any reason, the Receiving Party shall promptly return to the Disclosing Party, or at the Disclosing Party's option, certify destruction of, all Proprietary Information that is in its possession or control, in whatever form, including without limitation, all documents, reports, memoranda, notes, files or analyses that contain, summarize or are based upon any Proprietary Information and all copies thereof,

4. RESERVATION OF RIGHTS; WARRANTY DISCLAIMER; LIMITATION OF LIABILITY. Nothing in this Agreement is intended to grant any rights to either party under any patent, copyright, trademark, trade secret or other intellectual property rights of the other party, nor shall this Agreement grant the Receiving Party any rights in or to the Proprietary Information except as expressly set forth herein. The parties acknowledge and agree that none of the Proprietary Information transmitted or exchanged hereunder shall constitute any representation, warranty, assurance, guaranty or inducement with respect to the infringement of any patents, copyrights, trademarks, or other intellectual property rights of third parties. ALL PROPRIETARY INFORMATION IS PROVIDED "AS IS" AND THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, OR FITNESS OF ANY PROPRIETARY INFORMATION. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT.

5. REMEDY FOR BREACH. The parties acknowledge that monetary damages would not be an adequate remedy for any breach of this Agreement by the Receiving Party or its Representatives and that the Disclosing Party may, in addition to all other remedies available at law or in equity, obtain immediate injunctive or other equitable relief, without the necessity of posting bond or other security, to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party or any of its Representatives.

6. EXPORT CONTROL. The parties acknowledge that the Proprietary Information and any related materials or information provided under this Agreement may be subject to United States export laws and regulations. The Receiving Party shall not distribute, transfer, or transmit any Proprietary Information and related materials or information (even if incorporated into other products) except in compliance with the most current United States export laws and regulations. The Receiving Party shall first obtain the written consent of the Disclosing Party prior to submitting any request to any governmental entity for authority to export any Proprietary Information and related materials or information.

7. TERM AND TERMINATION. This Agreement shall terminate two (2) years after the Effective Date, unless earlier terminated by either party upon thirty (30) days' written notice to the other party. Any provisions of this Agreement relating to the rights and obligations of the parties concerning the Proprietary Information disclosed up to the date of expiration or termination of this Agreement shall survive any such expiration or termination.

8. MISCELLANEOUS.

(A) Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement.

(B) This Agreement contains the entire understanding between Nu-Trek and Promisor and supersedes all prior or contemporaneous written or oral communications, understandings, and agreements between Nu-Trek and Promisor relating to the subject hereof. This Agreement may not be modified except by a writing signed by the duly authorized representatives of both parties.

(C) Neither party may assign any or all of its rights or obligations under this Agreement without the prior written consent of the other, except that either party may assign its rights and/or obligations under this Agreement to its successor in connection with a merger, acquisition or consolidation, or to the purchaser in connection with the sale of all or substantially all of its assets without the prior written consent of the other party. Any unauthorized assignment shall be void and of no effect. No permitted assignment shall relieve a party of its obligations hereunder with respect to Proprietary Information disclosed to that party prior to such assignment. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the parties and their permitted successors and assigns.

(D) The construction, interpretation, and performance of this Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to the choice or conflict of law provisions thereof.

(E) It is understood and agreed that no failure or delay by either Nu-Trek or Promisor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right, power or privilege hereunder. No waiver of any terms or conditions of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition. All waivers must be in writing and signed by the duly authorized representative of the party sought to be bound.

(F) If any part of this Agreement shall be held unenforceable, the remainder of this Agreement will nevertheless remain in full force and effect.

(G) This Agreement may be executed in counterparts, including by facsimile or other electronic means, each of which may be deemed an original and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

NU-TREK, INC.

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____